NO. UWY-CV15 6050025 S	**:**	**SUPERIOR COURT**
	:	
DONNA L. SOTO, ADMINISTRATRIX	**:**	
OF THE ESTATE OF	**:**	**COMPLEX LITIGATION**
VICTORIA L. SOTO, ET AL	**:**	**DOCKET**
	:	
V.	**:**	**AT WATERBURY**
	:	
BUSHMASTER FIREARMS	**:**	
INTERNATIONAL, LLC, ET AL		
	:	**July 13, 2020**

BRIEF REGARDING PLAINTIFFS' REQUEST FOR PRODUCTION NO. 17 AND REMINGTON'S OBJECTION TO THAT RFP

As discussed during the July 9, 2020 status conference, this discovery dispute concerns Remington's repeated refusal to provide the names of the custodians it searched for information responsive to plaintiffs' Request for Production No. 17 ("RFP 17"). RFP 17 initially sought "any statements, documents, and/or communication concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, and/or concerning the events which are the subject of this Complaint." During numerous meet and confers regarding the scope of RFP 17, however, plaintiffs agreed to limit both the scope and time period of the request to "any statements, documents, and/or communication concerning the December 14, 2012 mass shooting at Sandy Hook Elementary School, including statements, documents, and/or communications concerning responses to the shooting and/or the shooter" from the time of the shooting through December 31, 2016. (DN 313, Ex. A.)

Remington also objected to RFP 17 on the basis of undue burden, suggesting that the RFP calls for the search of "thousands" of its employees' email accounts. In an effort to compromise, plaintiffs agreed that it would not seek the review of all of Remington's employees

emails. After suggesting that it had not yet collected or reviewed documents responsive to this request, plaintiffs and Remington agreed that plaintiffs could provide a list of potential custodians, which necessarily would need to be supplemented by Remington's own knowledge.

During a subsequent meet and confer, Remington changed its position, stating that it had in fact already collected documents responsive to this RFP. In an effort to arrive at a mutually agreeable universe of custodians whose files would be searched (in response to Remington's own undue burden objection), plaintiffs thereafter asked Remington to disclose the list of custodians from which it had collected documents. Remington refused to disclose the identities of the employees it has already searched or intends to search for responsive material, claiming that such information is work product privileged.

The identities of the custodians searched or to be searched in response to a request for production is not privileged information. *See Baranco v. Ford Motor Co.*, 2018 WL 9869540, at *1 (N.D. Cal. Apr. 10, 2018) (ordering defendant to disclose its proposed search methodology, including the identity of its custodians); *Burnett v. Ford Motor Co.*, 2015 WL 4137847, at *10 (S.D. Va. July 8, 2015) ("[C]ommon sense dictates that the party conducting the search must share information regarding . . . the custodians from whom the documents were retrieved."); *Hinterberger v. Catholic Health Sys., Inc.*, 2013 WL 2250591, at *34 (W.D.N.Y. May 21, 2013) (rejecting defendant's argument that the identities and job titles of defendant's custodians constituted attorney work product or were otherwise privileged and stating that such information is subject to discovery); *Apple Inc. v. Samsung Elec. Co. Ltd*., 2013 WL 1942163, at *3 (N.D. Cal. May 9, 2013) (finding that a third party was required to disclose custodian and search term information); *DeGeer v. Gillis*, 755 F. Supp. 2d 909, 929 (N.D. Ill. 2010) ("The Court is most troubled by the fact that there was no dialogue to discuss specific search terms or data custodians

to be searched in advance of Huron conducting its searches."); *Romero v. Allstate Ins. Co*., 271 F.R.D. 96, 109-10 (E.D. Pa. 2010) (ordering the parties to meet and confer on search terms, custodians, date ranges, and other components of a search methodology). Indeed, parties typically are expected to discuss and agree on custodian lists throughout discovery. *See, e.g.*, Sedona Conference Cooperation Guidance 3 (2011), available at https://thesedonaconference.org/publication/Cooperation_Guidance_for_Litigators_and_In-House_Counsel.

In previous filings, Remington has pointed to two cases in support of its argument. Neither case is on point here. In *DiDonna v. Vill. Farmys IGA, LLC*, for example, the plaintiffs sought the identities of individuals who had provided "oral, written, or recorded statements" about the case to defense counsel. 2012 WL 3879149 (E.D.N.Y. Sept. 6, 2012). Similarly, in *In re N.Y. Renu with Moistureloc Prod. Liab. Litig.*, the plaintiffs sought the identifies of individuals to whom the defendants provided a litigation hold notice. 2008 WL 2338552, at *18 (D.S.C. May 8, 2008). These circumstances are not analogous to ours, where plaintiffs seek only the identity of individuals whose emails have been or will be searched in response to a request for production in order to address Remington's objections related to the scope that request. plaintiffs are not aware of any case suggesting that the identity of custodians searched in response to a request for production is privileged, particularly where a discovery dispute about that request is ongoing.

For these reasons, plaintiffs request that the Court overrule Remington's objections to RFP 17. In addition, plaintiffs request that the Court direct Remington to disclose the identities of the custodians searched and to be searched in collecting documents responsive to RFP 17, so that plaintiffs can understand the scope of Remington's response.

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By: /s/ Joshua D. Koskoff

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CERTIFICATION OF SERVICE

This is to certify that a copy of the foregoing has been mailed, postage prepaid, and emailed this day to all counsel of record as follows:

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Dated: July 13, 2020

/s/ Joshua D. Koskoff
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